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AUG 28 2006

In re Application of :
Wayne (Weijie) J. Liu :
Application No. 10/751,323 :
Filed: January 5, 2004 :
Title of Invention: :
METHOD AND APPARATUS FOR THIXOTROPIC :
MOLDING OF SEMISOLID ALLOYS :

OFFICE OF PETITIONS

DECISION ON
PETITION

This is a decision in response to Petition to Withdraw the Holding of Abandonment, filed October 27, 2005. The delay in trwating this petition is regretted.

The Petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the Office Communication mailed February 1, 2005. The Office communication set a one (1) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned on March 2, 2005. A Notice of Abandonment was mailed August 24, 2005.

Petition under 37 CFR 1.181(a)

Applicant files the instant petition wherein Applicant avers non-receipt of the Office communication.

Applicable Law, Rules and MPEP

Applicant is advised that an allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the Applicant stating that the Office communication was not received by the Applicant and attesting to the fact that a search of the file jacket and docket records indicate that the Office communication was not received.
2. A copy of the file jacket or docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in Applicant's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Analysis

A review of Office records indicate that the non-final Office action was properly mailed to the correspondence address of record. Absent any irregularities in the mail, correspondence is presumed to have been delivered to the correspondence address of record. A review of the file reveals no irregularity in the mailing.

A review of the application papers reveals that on a Response to Request for Corrected Filing Receipt was mailed to the law firm of Wood, Herron & Evans in Cincinnati, Ohio on July 23, 2004. Thereafter, the subject Office communication was mailed February 1, 2005 to Applicant in Ottawa, Ontario, Canada. On February

25, 2005, approximately 24 days after the subject Office communication was mailed, Applicant filed a Change of Correspondence Address, changing the correspondence address to the above address in the Republic of Korea.

In view of the foregoing, there is a question of whether Applicant had changed his correspondence address prior to filing the Change of Correspondence Address, such that the Office communication may have been lost after receipt at the proper correspondence address of record.

Accordingly, Applicant's assertion, that the Office action was not received, is insufficient to justify withdrawing the holding of abandonment. Applicant must also attest to the fact that a search of the file jacket and docket records indicate that the Notice was not received, and provide a copy of the docket record (or file jacket) where the non-received Notice would have been entered had it been received and docketed.

Moreover, Applicant must provide a statement, under penalty of perjury, attesting to the exact date that Applicant changed his correspondence address. See MPEP 602.

Alternate Venue

Alternatively, Applicant may petition to revive the application based upon unintentional delay. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


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